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CHARLES ELMORE

No. 717

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK, - Petitioner,

WILLIAM W. RADFORD, SR.

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

JOHN E. TARRANT,
Counsel for Petitioner.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

[References required by Rules 12 and 27]

Opinion below. *Louisville Joint Stock Land Bank* v. *Radford* (unreported), decided February 11, 1935.

Jurisdictional authority. Judicial Code, §240(a), as amended by Act of February 13, 1925.

Date of Judgment. February 11, 1935 (R. 100).

Nature of the case, rulings, etc. A Joint Stock Land Bank, as mortgagee, began foreclosure proceedings in a State Court against a farmer. After judgment of sale had been entered in the State Court, but before the property could be sold, the farmer filed in the Federal Court a petition under the "Agricultural Compositions and Extensions" provisions of §75(c) of the Bankruptcy Act as amended March 3, 1933, and as further amended by the Frazier-Lemke Act of June 28, 1934, praying that he be adjudged a bankrupt; that all proceedings against him be stayed for five years; that he be allowed to retain possession of the property during that time; and be given an option to purchase it at its appraised value (R. 12, *et seq.*).

The Joint Stock Land Bank attacked the constitutionality of Subsection s(7) of the Frazier-Lemke Act Amendment, upon the ground (*a*) that it was not a law "on the subject of Bankruptcies," and (*b*) that it deprived the Land Bank, as mortgagee, of its property without "due process of law" (R. 15-49).

The District Court sustained the constitutionality of the Act (R. 52-67), staying all proceedings against the bankrupt for five years, giving him the possession of the mortgaged property for five years at an annual rental of $325 (R. 85-86).

On appeal, the Circuit Court of Appeals for the Sixth Circuit affirmed the decree below, and held the Frazier-Lemke Act constitutional (R. 100-112).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK, - - *Petitioner,*

v.

WILLIAM W. RADFORD, SR.

PETITION FOR A WRIT OF CERTIORARI

TO THE

United States Circuit Court of Appeals for the Sixth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Louisville Joint Stock Land Bank petitions for a writ of *certiorari* to review a decision of the C. C. A. (6th Circuit), just rendered February 11, 1935, in *Louisville Joint Stock Land Bank* v. *Radford* (unreported), which sustained the constitutionality of the Frazier-Lemke Act of June 28, 1934, amending §75 of the Bankruptcy Act, regarding "Agricultural Compositions and Extensions."

SHORT STATEMENT OF THE MATTER INVOLVED.

The District Court and the C. C. A. held that Radford (a farmer possessed of both real and personal property) could, by filing a petition under the Frazier-Lemke Act, obtain (1) a five-year-stay of all proceedings against him for the foreclosure of a $9,000 mortgage on his 170-acre farm; (2) the right during that period to remain in possession of the farm, upon the payment of only $325 a year rental; and (3) the right at any time during the five years to purchase the mortgaged property at its appraised value.

The Joint Stock Land Bank, as mortgagee, offered to pay into the Bankruptcy Court, in cash, the full amount of the mortgage debt and interest, to-wit: $9,205.09. But the Court disregarded that offer, approved the value fixed by the appraisers of $4,445 (R. 72, 73); enjoined the Land Bank for five years from a proceeding in any court to enforce its lien; and gave possession of the property to the bankrupt at a rental of $325 a year. The bankrupt has the right during the five years to be discharged of his debts, and purchase the property at $4,445, or at a re-appraised value, if the mortgagee desires.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I. The constitutionality of the Frazier-Lemke Act is an important question of Federal law, which has not been, but which should be, settled by this Court.

There are over a million farm mortgages in this country, aggregating around *eight billions of dollars* of indebtedness.

The Act prevents a mortgagee from enforcing the lien of his mortgage. On application of the debtor, a *five-year moratorium must* be granted to him, leaving him in possession of the property upon the payment of a rental fixed by the Court, with an exclusive option to him to buy the property at an appraised value, and thereafter be discharged from his indebtedness.

Many such cases are now pending in all parts of the United States, involving the foreclosure of farm mortgages and the constitutionality of the Frazier-Lemke Act. The number is constantly increasing.

It is important that the constitutionality of the Act should be promptly settled by this Court, in order that there may be a uniform guide in the administration of farm foreclosures in this country.

The Frazier-Lemke Act is unconstitutional for two reasons:

(1) It does not provide for a speedy or ratable, or indeed any, distribution of the debtor's assets among his creditors; and, therefore, it is not a "law on the subject of Bankruptcies," and is an encroachment on the reserved rights of the States (*U. S.* v. *Fox*, 95 U. S. 670; *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 186; *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637, 647; *In re Swafford Bros. Dry Goods Co.*, 180 Fed. 549, 556; *In re California Pacific R. R. Co.*, Fed. Cases No. 2315).

The C. C. A.'s statement that the Act "provides for ratable distribution of the bankrupt's assets among his creditors" is not accurate. *It does not distribute the assets at all.* It provides that the bankrupt may, within five years, *pay an appraised value* and keep the mortgaged property. The Act provides for a distribution of the ap-

praised value, *but not for a distribution of the bankrupt's assets.*

(2) It destroys the mortgagee's property right in the specific thing mortgaged, and it amounts to a legislative taking of property from one person for the benefit of another. Its provisions are so unreasonable, arbitrary and confiscatory as to violate the "due process" clause of the Fifth Amendment, in that it, in effect, takes away the vested property rights of the mortgagee, and gives them to the mortgagor (*Gunn* v. *Barry*, 15 Wall. 610; *In re Dillard*, 2 Hughes, 190; *Mo. Pacific R. Co.* v. *Nebraska*, 164 U. S. 403, 417; *Ochoa* v. *Hernandez*, 230 U. S. 139, 161; *Lynch* v. *U. S.*, 292 U. S. 571, 580). It cannot be justified upon the ground of emergency, as the five-year *moratorium* is absolute, and is not limited to the existence or continuance of an emergency (*W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426).

II. This decision by the C. C. A. (6th) is the first decision by any C. C. A. on the constitutionality of the Frazier-Lemke Act; but two District Courts have held the Act to be unconstitutional, one of which cases is now pending undetermined in the Circuit Court of Appeals for the Fourth Circuit.

JOHN E. TARRANT,
Counsel for Petitioner.

Feby. 12, 1935.

The respondent hereby acknowledges due proof of service of notice of the filing of the foregoing Petition for *Certiorari*, together with a copy of the Petition and printed Record; and the respondent hereby waives the time limit within which to file an opposing brief thereto.

D. A. Sachs, Jr.,
Edwin A. Krauthoff,
Counsel for Respondent.

February 13, 1935.